

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejection of the application are respectfully requested in view of the amendments and remarks made herein, which place the application in condition for allowance.

Applicant notes with appreciation the Examiner's finding that the present invention is novel over the cited prior art.

Status of claims and formal matters

Claims 1 and 3-5 are pending in this application.

Non-elected claims have been cancelled and claims 1 and 3 have been amended. Support for the amendments made to claim 1 is found on page 10, lines 8-14 of the specification as originally filed. No new matter has been added by this amendment. Claim 3 has been amended in order to appropriately correct its dependency.

It is submitted that the claims as amended, herewith are patentably distinct over the prior art in the Office Action, and these claims are in full compliance with the requirements of 35 U.S.C §112.

Response to claim objections and rejections – 35 USC § 103(a):

Claims 1 and 3-5 are rejected under 103(a) as allegedly being unpatentable over Hartigan et al in view of Cheruki et al [US 7,317,838]. This rejection is respectfully traversed.

The present invention relates to a coating process of sugarless boiled sweets wherein the coating syrup comprises from 5 to 70 % by weight of at least one polyol, at least one high molecular weight polysaccharide, 10-40% by weight of at least one fat and at least one silicate (claim1). **The process of the invention is based on the prevention of crystallization.**

In Hartigan et al, the coating layer which is based on a combination of microcrystalline cellulose and gum (MCC-GUM) is formed by **crystallization** (column 3 lines 37-44).

In Cherukuri et al, the coating syrup which is based on sorbitol in the crystalline form is also formed by crystallization (Column 1 lines 9-11). As a matter of fact, the **crystallization** of the coating layer of Cherukuri et al is initiated by seeding of a dusting mix (column 2 lines 60-61).

Thus, the entire coating process of both Cherukuri et al and Hartigan et al involves crystallization in order to generate the require coating.

Contrary to the above-cited prior art, the process of the invention promotes vitrification of the coating syrup while precluding crystallization (claim 1). Unlike the crystallization process of the prior art that leads to the formation of opaque coating, the vitrification process of the present invention allows the syrup to cool down and harden to form a hard and translucent coating.

The Applicant has discovered that whether vitrification or crystallization occurs mainly depend on the composition of the coating syrup. As emphasized in the specification the Applicant has surprisingly and unexpectedly found that, "*the coating syrup advantageously comprises at least 5 % by weight of the said polyol, and at most 70 % by weight. Above this content, undesirable crystallization phenomena are indeed observed, which mean that the coating becomes opaque*" (page 10, lines 8-14 of the present specification). The specific composition of the coating syrup of the invention is therefore crucial to prevent crystallization.

Due to the specific coating composition which promotes vitrification, the coating process of the present invention produces a hard and translucent coating that has the advantages of avoiding moisture regain and loss of the translucent appearance over

time and, thus precludes the boiled sweets from becoming sticky or opaque, respectively (page 5 lines 9-17 of the present specification).

Furthermore, Cherukuri et al and Hartigan et al do not suggest the claimed invention, as they **never** address the issue of forming a non-crystallized hard and transparent coating.

Accordingly the prior art is not relevant to assess the obviousness of the coating process according to the invention. The Examiner is respectfully reminded of case law; namely, that there must be some prior art teaching which should provide the necessary incentive or motivation for modifying the reference teaching. *In re Laskowski*, 12 U.S.P.Q 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993).

In view of the foregoing, Applicant has respectfully pointed out that none of the cited prior art documents, taken alone or in combination, offers any incentive to use the specific coating syrup of the invention that precludes crystallization in order to generate a hard and translucent coating. The resulting coating allows the non-sticky coated boiled sweets to be marketed without individual wrapping.

The instant claims thus do not contravene 35 USC 103(a).

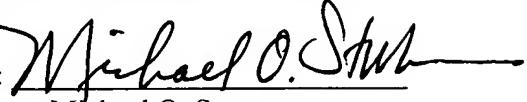
Consequently, reconsideration and withdrawal of this rejection is respectfully requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

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Respectfully submitted,

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